



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF DANGAYEVA AND TARAMOVA v. RUSSIA

(Application no. 1896/04)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Dangayeva and Taramova v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 1896/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Ms Madina Dangayeva, who was born in 1952. and Ms Aina Khasmagometovna Taramova, who was born in 1943 (“the applicants”), on 26 November 2003.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Stichting Russian Justice Initiative (“SRJI”), an NGO based in the Netherlands with a representative office in Russia. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 September 2005 the Court decided to apply Rule 41 of the Rules of Court.

4. On 5 April 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants live in Grozny, Chechnya. The first applicant was married to the second applicant's brother, Mr Saidkhasan Khasmagamedovich Dangayev, who was born in 1948. The couple had two children. At the material time Saidkhasan Dangayev was a senior bailiff and held an officer's identity card (no. 028814) and a gun licence. He had positive references from his superior.

A. Killing of Saidkhasan Dangayev

6. On 23 October 2002 Saidkhasan Dangayev and the first applicant together with Mr Dangayev's nephew and his wife were at the Dangayevs' family house at 14 Pogranichnaya Street in the Staropromyslovskiy district of Grozny. The town was under curfew; checkpoints manned by Russian federal forces were located on the main roads leading to and from the town.

1. The applicants' version of the events

7. At about 9.45 p.m. a UAZ military vehicle arrived at the Dangayevs' house. Nine or ten tall men in camouflage uniforms and masks descended from it. They were armed with machine-guns equipped with silencers and spoke unaccented Russian. The men told the first applicant that they were from the military commander's office and ordered her to open the gates. When she did so, they entered the courtyard. The applicants thought that the men were Russian servicemen.

8. The servicemen asked the first applicant whether there were any weapons in the house. Saidkhasan Dangayev came out to the courtyard and requested the servicemen to produce identification. The men replied that they were from the military commander's office and were performing an identity check.

9. Saidkhasan Dangayev produced his bailiff's identity card and his service pistol. The servicemen took his card and the gun. While they were examining the identity document, one of them shouted and swore at the first applicant. Saidkhasan Dangayev asked him to mind his language in the presence of women, but received a kick from one of the servicemen. He then rushed into the house and reappeared on the porch with his service machine-gun. One of the servicemen then shot Saidkhasan Dangayev in the

arm and chest, whereupon the servicemen ran out of the courtyard with Saidkhasan Dangayev's identity card and pistol.

10. Saidkhasan Dangayev fell to the ground bleeding. The first applicant was unable to transport him to the doctor's because of the curfew. After a few minutes Saidkhasan Dangayev died from blood loss in the courtyard of his house.

11. According to the first applicant, her neighbours had seen her husband's killers arrive at the applicants' house on board UAZ military vehicles. However, they refused to give witness statements as they feared for their safety.

12. The applicants also submitted that either before or after the killing of Saidkhasan Dangayev, the same group of armed men had visited the house of their neighbour, Mr M.

13. In support of their account the applicants submitted two witness statements by the first applicant and copies of the documents received by the applicants from the investigation into Saidkhasan Dangayev's death.

2. Information submitted by the Government

14. The Government submitted that "at about 10.00 p.m. on 23 October 2002 unidentified persons in camouflage uniform and masks, armed with automatic weapons arrived on board a UAZ vehicle at 14 Pogranichnaya Street, Grozny, and committed the murder of S. Kh. Dangayev".

15. Referring to the witness statement the first applicant had given in the investigation into her husband's death the Government noted that on the evening of 23 October 2002 she and her husband had been at home. From the window she had seen several men speaking loudly and using swear words. They had told her that they were from the military commander's office and were conducting an identity check. After she opened the gate seven or eight armed masked men had entered the courtyard. The first applicant's husband had come out of the house carrying a pistol. He had introduced himself to the armed men, showed his bailiff's identity card and asked the men about their identity and the reasons for their visit. In response one of them had kicked him between the legs. He had then gone back into the house before returning with a machine-gun. One of the armed men had shot him. As she had not heard the sound of gunfire, the first applicant thought that the weapon must have been equipped with a silencer. Immediately afterwards the applicant's husband had fallen to the ground and the armed men had left with his bailiff's identity card and service pistol. Meanwhile, the applicant's nephew, Mr Isa D., had picked up the machine-gun and fired a number of shots in the direction of the departing men who had not responded. The first applicant had not heard the noise of car engines or see any cars.

16. The Government noted that the first applicant had failed to inform the investigators that she had been prevented by the curfew from taking her husband to hospital.

17. According to the Government, at about 9.30 p.m. on the same date (23 October 2002) a group of unidentified armed men in camouflage uniforms and masks had broken into the yard of Mr T.M., an engineer from the operational communications unit of the department of the interior of the Staropromyslovskiy district of Grozny (the Staropromyslovskiy ROVD), requested his identity papers and taken away his officer's identity card.

18. On the same date a shooting incident involving the same group of armed men had taken place at the house of Mr I. S., an officer of the criminal search unit of the Staropromyslovskiy ROVD.

19. The Government stated that according to information received from various prosecutors' offices in Chechnya no "power structures" (*силовые структуры*) had been engaged in special operations in Pogranichnaya Street, Grozny on 23 October 2002. The Government stressed that there were grounds for suspecting that the group of armed men who had visited all three houses were an illegal armed group.

B. The investigation into the death

1. The background

20. On 24 October 2002 the prosecutor's office of the city of Grozny ("the Grozny prosecutor's office") instituted an investigation into the murder of Saidkhasan Dangayev under Article 105 § 2 of the Russian Criminal Code ("aggravated murder"). The case file was assigned number 54093.

21. On 24 October 2002 Saidkhasan Dangayev's body was examined by a forensic expert and a report was drawn up which stated that the body had two gunshot wounds: one in the left arm and the other on the left side of the chest. No other injuries were found. It appears that the examination was perfunctory and no post-mortem was carried out.

22. On 5 November 2002 the Grozny prosecutor's office granted the first applicant victim status in criminal case no. 54093.

23. On 6 November 2002 it issued a certificate confirming that Saidkhasan Dangayev had been killed by unidentified persons and that the investigation was in progress.

24. On 24 December 2002 (in the documents produced to the Court the date is mistakenly stated as being 24 December 2003) the Grozny prosecutor's office suspended the investigation in case no. 54093 owing to a failure to establish the identity of the killers.

25. On an unspecified date in 2002 it conducted a crime scene inspection at 14 Pogranichnaya Street, Grozny, where it collected an AK-47 assault rifle no. 519506, a machine-gun belt, bullet casings, bullets and a cartridge.

26. On 15 January 2003 it informed the first applicant of its decision to suspend the investigation.

27. On 4-5 February 2003 the Chechnya Forensics Bureau examined the cause of death on the basis of an autopsy report dated 24 October 2002. It concluded that the death could have been caused by the gunshot wound in the chest.

28. On 5 April 2003 the first applicant wrote to the Chechnya prosecutor's office requesting that the investigation into her husband's murder be resumed, that she be provided with detailed information on progress and granted victim status in the proceedings.

29. On 14 May 2003 the Chechnya prosecutor's office quashed the decision to suspend the investigation and reopened the proceedings, noting *inter alia*, that the investigation had established the following:

"...Between 9.30 p.m. and 11 p.m. on 23 October 2002 a group of armed men in camouflage uniform conducted identity checks and inspected houses in Pogranichnaya Street, Grozny. They entered the yard of the house at 14 Pogranichnaya Street where the senior bailiff from the Staropromyslovskiy bailiff's office S. Kh. Dangayev resided with his wife, his nephew and his nephew's wife.

According to the witness statement of Mrs M. Dangayeva, the wife of the victim, six or seven armed men entered the yard. S. Kh. Dangayev heard the noise and came out into the yard. He had his pistol and bailiff's identity card with him. He produced them to the men and asked them who they were. In response he was kicked between the legs. He then ran back into the house and reappeared on the porch holding a machine-gun. At that moment he was shot with a silenced-equipped gun. After he had fallen to the ground, the men, who, in Mrs Dangayeva's opinion were military servicemen, started running away from the yard. Her nephew picked up her husband's gun and opened fire at them.

The investigators collected from the crime scene: 49 bullet casings of calibre 7.62 x 38 mm, 41 of which had been fired from the calibre 7.62 AKM machine-gun assigned to S. Kh. Dangayev as his service gun under licence no. 519506-75 and 8 bullet casings which had been shot from another gun. Additionally, the investigation also collected 8 calibre 7.62 x 38 mm bullet casings which had been fired from a sniper rifle or calibre 7.62 machine-gun and 3 calibre 7.62 x 33 mm bullets ..."

On the same date the Chechnya prosecutor's office informed the first applicant of the decision to reopen the investigation and undertook to update her on any progress in the proceedings.

30. On an unspecified date in 2003 the investigators ordered a ballistic report on the bullet casings which had been found at the scene on 23 October 2002.

31. On 19 May 2003 the investigation was transferred to the prosecutor's office of the Staropromyslovskiy district of Grozny ("the district prosecutor's office").

32. On 18 June 2003 the district prosecutor's office informed the first applicant that the investigation had been suspended owing to the failure to

establish the identity of the killers and that she had the right to challenge the decision before a higher prosecutor or a court.

33. On 19 June 2003 the district prosecutor's office suspended the investigation owing to the failure to establish the killers' identity. The applicants were not informed.

34. On 28 July 2003 a lawyer acting on behalf of the first applicant requested the district prosecutor's office to provide the first applicant with a copy of their decision of 19 June 2003.

35. On 24 October 2003 the SRJI requested the Chechnya prosecutor's office to provide detailed information on the investigation, in particular, on whether the findings of the ballistic report had been used to identify the type of gun used and the killers and whether the bullets had been extracted from the body, placed with the investigation file and submitted to the ballistic experts for evaluation. The prosecutor's office was also asked to inform the applicant why the investigators had also decided to examine the investigation files in criminal cases nos. 54824 and 54098 and of the results of the comparative ballistic expert evaluation of the bullet casings in all three cases. Finally, the prosecutor's office was asked to provide the first applicant and her representative with a copy of the ballistic report and of the decision granting the first applicant victim status and to inform her about progress in the investigation.

36. On 21 December 2003 the SRJI again wrote to the Chechnya prosecutor's office stating that they had not received any response to their request of 24 October 2003.

37. On 6 February 2004 the district prosecutor's office quashed the decision to suspend the investigation and reopened the criminal proceedings. The decision stated, *inter alia*:

"...[the investigators] failed to question witnesses Mrs L.B., Mr R.G., who was born in 1964, Mr I.Sh. and Mr S.V..."

It is necessary [for the investigators] to identify and question the persons who saw the car and armoured vehicles used by the unidentified persons who arrived at Saidkhasan Dangayev's house, to establish their route to the house and the direction in which they departed.

It is necessary [for the investigators] to enquire of the Headquarters of the Internal Troops of the Russian Ministry of the Interior, the Armed Forces and other law-enforcement agencies stationed in Chechnya whether any special operations were conducted during the night of 23 October 2002 in Pogranichnaya Street and nearby streets in Grozny.

[The investigators] should ask all permanent and temporary district departments of the Chechnya Ministry of the Interior and the Chechnya Department of the Federal Security Service, the Regional Operational Headquarters, the Main Intelligence Department of the Ministry of Defence whether they conducted any special operations during the night of 23 October 2002 in Pogranichnaya Street in Grozny.

[The investigators] should obtain the registration log of the car and armoured vehicles which went through the checkpoints along the Staropromyslovskiy main road during the night of 23 October 2002 and carry out operational-searches to establish whether the unidentified killers belonged to federal structures..."

38. On 9 February 2004 the Chechnya prosecutor's office informed the first applicant that the investigation into her husband's murder was in progress and advised her to contact the district prosecutor's office in order to join the proceedings as a victim. A copy of the letter was sent to the SRJI.

39. On 6 March 2004 the district prosecutor's office suspended the investigation owing to a failure to establish the identity of the killers.

40. On 27 March 2004 the district prosecutor's office quashed the decision to suspend the investigation and reopened the proceedings. The decision stated, *inter alia*:

"It is necessary to take the following investigative actions:

- to grant one of the relatives [of Saidkhasan Dangayev] victim status in the criminal proceedings and to question him/her in that capacity;
- to question Mr A.E. as a witness;
- to examine the investigation files in criminal cases nos. 54824 and 54098 and, if necessary, to join the investigation of these criminal cases [with the investigation into the murder of Saidkhasan Dangayev, criminal case no. 54093];
- to request responses to the investigators' requests for information and send reminders, if necessary;
- to question as witnesses persons whose preliminary accounts of the events were included in the investigation file;
- to send requests for information to all district and city prosecutors' offices in Chechnya..."

The applicants were informed of this decision on 26 April 2004.

41. On 27 May 2004 the district prosecutor's office suspended the investigation owing to a failure to establish the killers' identity. A letter informing the first applicant of this decision was sent to her address on the same date.

42. On 17 May 2005 the SRJI wrote to the district prosecutor's office reiterating their request of 24 October 2003 for information about the results of the ballistic expert evaluation and progress in the investigation.

43. On 29 September 2005 the SRJI wrote to the Chechnya prosecutor's office stating that no reply had been received to their request of 17 May 2005.

44. On 7 November 2005 the district prosecutor's office informed the first applicant that they had reopened the investigation that day.

45. On 8 November 2005 the district prosecutor's office informed the SRJI that pursuant to Article 161 of the Criminal Procedure Code they could not disclose any information concerning the investigation.

46. On 7 December 2005 the district prosecutor's office suspended the investigation owing to the failure to establish the killers' identity and informed the first applicant.

47. On 5 April 2007 the present application was communicated to the Russian Government and a copy of the investigation file into the death of the applicants' relative was requested.

48. On 13 June 2007 the district prosecutor's office quashed the decision to suspend the investigation as being unsubstantiated and reopened the proceedings. The applicants were not informed of this decision.

49. The Court has not been informed whether any investigative steps have been taken by the district prosecutor's office since the last reopening of the criminal investigation on 13 June 2007.

2. Additional information submitted by the Government

50. The Government submitted additional information about the investigation into the murder of Saidkhasan Dangayev. However, they did not submit to the Court the witness statements, forensic and ballistic reports and a number of other documents to which they referred in their submission. The list of documents submitted by the Government is provided below (see paragraph 64).

51. According to the Government on 24 October 2002 – the day following Saidkhasan Dangayev's death – the Grozny prosecutor's office opened criminal case file no. 54093 and took the necessary investigative measures. The Government did not specify which measures were carried out by the investigators on that date.

52. The Government submitted that the applicants had not informed the investigators that at the material time the Staropromyslovskiy district of Grozny had been under curfew which had prevented the transportation of Saidkhasan Dangayev to a local hospital. In addition, they referred to statements by unnamed witnesses who said that they had not been prevented from moving freely about the Staropromyslovskiy district of Grozny during the curfew.

53. The Government further submitted that the applicant had not mentioned in her complaints to the domestic authorities that the killers could have been Russian military servicemen.

54. According to the Government, the manner in which Saidkhasan Dangayev was killed (by a gun equipped with a silencer) and the fact that the heavily armed assailants had left the scene without responding to the numerous shots fired by Mr Isa D. demonstrated that it could not have been a special operation by law-enforcement agencies. They added that the fact that the killers were armed with AK-47 assault rifles, pistols and sniper rifles with silencers did not prove that they were members of federal forces.

55. According to the Government, the investigators in criminal case no. 54093 questioned six witnesses: Mr Isa D., Mr R.G., Mrs A.E., Mr A.E., Mr T.M., and Mrs Zh.I. who described the perpetrators as a group of unidentified armed masked men in camouflage uniform who had spoken unaccented Russian.

56. The Government further submitted that the description provided by the witnesses did not demonstrate that the assailants were representatives of

the State. Although the camouflage uniforms used were similar to the uniform of military servicemen, such uniforms had been available for purchase everywhere in the Russian Federation. In addition, the masks used did not have features distinguishing criminals from military servicemen. The firearms used could have been stolen or obtained by other illegal means. The fact that the killers spoke Russian did not prove that they were Russian military servicemen; they could have been residents of Chechnya and members of illegal armed groups from other countries who spoke the language.

57. The investigators had collected a significant number of bullet casings at the scene. According to the Government, this fact along with the inability of the eye-witnesses to clarify who was shooting and from which direction, cast doubt on the truthfulness of their statements to the criminal investigators. Nevertheless, the investigators had been trying to clarify the factual circumstances surrounding the killing.

58. The Government referred to a letter from the Staropromyslovskiy ROVD and submitted that the investigators had not found any witnesses able to confirm that the killers had arrived at the house by car or in armoured vehicles. According to the letter, on an unspecified date after Saidkhasan Dangayev's death, officers of the Staropromyslovskiy ROVD had gone to the homes of residents in Pogranichnaya Street and the nearby streets trying to obtain information relating to the murder of Saidkhasan Dangayev. They had spoken to five local residents who had not provided any meaningful information.

59. The Government further referred to the ballistic expert's report of 18 June 2003 (a copy of this document was not provided to the Court). According to that report, a comparison of the bullet casings found at the scene of Saidkhasan Dangayev's murder with casings found at the scene of the theft of Mr R. Kh.'s property on 12 October 2002 (criminal case no. 54824 – see paragraph 18 above) and at the scene of the 23 October 2002 shooting at the home of Mr I. S., an officer of the criminal search division of the Staropromyslovskiy ROVD (criminal case no. 54098) had established that the same gun had been used to commit all three crimes.

60. Referring to the witness statement of Mr T. M., an engineer from the operational communications department of the Staropromyslovskiy ROVD (see paragraph 17 above), the Government submitted that at about 9.30 p.m. on 23 October 2002 a group of unidentified masked men in camouflage uniforms had broken into his yard, demanded his officer's identity card and taken it away with them.

61. The Government contended that the taking of T.M's and Saidkhasan Dangayev's identity cards by the unidentified men demonstrated that the crimes had been perpetrated by the same group with the intention of using the documents for criminal purposes.

62. The Government further referred to the information received from the Chechnya Department of the Federal Security Service (the Chechnya FSB) and the Oktyabrskiy ROVD of Grozny that the Chechnya FSB had not conducted any special operations in Pogranichnaya Street, Grozny on 23 October 2002. Various prosecutors' offices in Chechnya had also confirmed that they were not aware of any special operations being carried out by law-enforcement agencies in Pogranichnaya Street, Grozny on that date.

63. The Government further confirmed that the investigation had been suspended on a number of occasions owing to the failure to identify the perpetrators. The applicants had been duly informed each time the criminal proceedings had been suspended or reopened as also of their right to appeal against these decisions to public prosecutors or domestic courts. The Government further stated that although the investigation had not identified the killers, it was currently under way and investigative measures aimed at solving the crime were being taken.

64. Despite specific requests by the Court the Government refused to disclose most of the documents from the investigation file in criminal case no. 54093 on the grounds that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since it would be against the interests of the participants of the criminal investigation and lead to a violation of their rights. The Government submitted 20 procedural documents (29 pages) from the investigation file in criminal case no. 54093 as follows:

- (a) decision dated 24 October 2002 to open a criminal case;
- (b) four investigators' decisions dated 28 October 2002, 19 May 2003, 26 April 2004 and 7 November 2005 to take up the case;
- (c) five decisions dated 24 December 2003 (which should read 24 December 2002), 19 June 2003, 6 March 2004, 27 May 2004 and 7 December 2005 to suspend the investigation;
- (d) four decisions dated 14 May 2003, 6 February 2004, 27 March 2004 and 13 June 2007 to reopen the investigation;
- (e) four letters dated 15 January 2003, 18 June 2003, 27 May 2004 and 7 December 2005 informing the applicants of the suspension of the investigation;
- (f) two letters dated 26 April 2004 and 7 November 2005 informing the applicants of the reopening of the investigation.

II. RELEVANT DOMESTIC LAW

65. Article 125 of the Russian Code of Criminal Procedure 2001 ("CCP") provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and

freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

66. Article 161 of the CCP establishes the rule that data from the preliminary investigation cannot be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of participants in criminal proceedings without their permission.

67. Article 1069 of the Russian Civil Code provides that damage sustained by an individual because of the unlawful acts or omissions of State and municipal agencies or their officials is to be indemnified by the State or municipal treasury concerned.

THE LAW

I. THE GOVERNMENT'S OBJECTION OF ABUSE OF THE RIGHT OF APPLICATION

68. The Government submitted that the application had not been lodged with a view to restoring the allegedly violated rights of the applicants. Its actual object and purpose was clearly of a political nature as the applicants wanted to "incriminate the Russian Federation of allegedly adopting a policy of violating human rights in the Chechen Republic". They concluded that the application should be dismissed pursuant to Article 35 § 3 of the Convention.

69. The Court considers that the Government may be understood to be suggesting that there was an abuse of the right of application on the part of the applicants. It observes in this respect that the complaints the applicants brought to its attention concern genuine grievances. Nothing in the case file reveals any appearance of an abuse of their right of individual application. Accordingly, the Government's objection must be dismissed.

II. THE GOVERNMENT'S OBJECTION AS TO NON-EXHAUSTION OF DOMESTIC REMEDIES

A. The parties' submissions

70. The Government contended that the application should be declared inadmissible for non-exhaustion of domestic remedies as the investigation into the death of Saidkhasan Dangayev had not yet been completed.

71. The applicants disagreed with the Government's objection. They stated that the criminal investigation had proved to be ineffective. Referring to other cases concerning similar crimes that had been reviewed by the Court they alleged that the existence of an administrative practice of non-investigation of crimes committed by State servicemen in Chechnya rendered any potentially effective remedies inadequate and illusory in their case.

B. The Court's assessment

72. As regards the Government's objection concerning criminal-law remedies, the Court observes that the applicants complained to the law-enforcement agencies immediately after Saidkhasan Dangayev was killed and that an investigation has been pending since 24 October 2002. The applicant and the Government were in disagreement about the effectiveness of this investigation.

73. The Court considers that the Government's objection raises issues concerning the effectiveness of the criminal investigation which are closely linked to the merits of the applicants' complaints. Thus, it considers that the objection should be joined to the merits and falls to be examined below under the relevant substantive provisions of the Convention.

III. THE COURT'S ASSESSMENT OF THE EVIDENCE AND THE ESTABLISHMENT OF THE FACTS

A. The parties' submissions

74. The applicants maintained that it was beyond reasonable doubt that the men who killed Saidkhasan Dangayev were State agents. In support of that affirmation they referred to the following facts. At the material time the Staropromyslovskiy district of Grozny had been under the total control of federal troops. There were military checkpoints at the roads leading to and

from the town. The armed men who had shot Saidkhasan Dangayev were tall, well-built and spoke unaccented Russian, which proved that they were not of Chechen origin. They had arrived at Saidkhasan Dangayev's house on a UAZ vehicle of a type normally used only by federal forces. Because of the curfew, such a large group of armed men could not have moved freely around the town between 8 p.m. and 6 a.m. unless they had the permission of federal forces or were military servicemen. The men had twice stated that they were from the military commander's office and acted in a manner similar to that of special forces carrying out identity checks.

75. The Government submitted that Saidkhasan Dangayev had been killed by unidentified men. They further contended that the investigation into his death was pending, that there was no evidence that the killers were State agents and therefore no grounds for holding the State responsible for the alleged violations of the applicants' rights. The Government also stated that according to one theory examined by the investigators, the crime could have been committed by members of an illegal armed group.

B. The Court's assessment of the facts

76. The Court relies on a number of principles that have been developed in its case-law when it is faced with the task of establishing facts on which the parties disagree. As to the facts in dispute, the Court refers to its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of the evidence (see *Avjār v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

77. The Court notes that despite its requests for a complete copy of the investigation file into the death of Saidkhasan Dangayev, the Government have produced only a small number of documents from the case file on the grounds that they are precluded from disclosing the remaining documents by Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has found this explanation insufficient to justify the withholding of key information requested by the Court (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

78. In view of this and bearing in mind the principles referred to above, the Court considers that it may draw inferences from the Government's conduct in respect of the well-foundedness of the applicants' allegations. It will thus proceed to examine crucial elements in the present case that should be taken into account when deciding whether the death of the applicants' relative can be attributed to the authorities.

79. The applicants alleged that the persons who had killed Saidkhasan Dangayev on 23 October 2002 were State agents.

80. The Government argued that those responsible could have been members of an illegal armed group. However, this allegation was not specific and they have not submitted any material to support it. The Court would stress in this regard that the evaluation of the evidence and the establishment of the facts is a matter for the Court, and it is incumbent on it to decide on the evidentiary value of the documents submitted to it (see *Çelikbilek v. Turkey*, no. 27693/95, § 71, 31 May 2005).

81. The Court notes that the applicants' allegation is supported by the witness statements of the first applicant and by other materials collected by the investigators. It finds that the fact that a large group of armed men in uniform introducing themselves as representatives of the military commander's office was able to move freely around the locality during curfew hours and proceeded to check identity papers in the houses of local residents is consistent with the applicants' allegation that its members were in fact State servicemen conducting a security operation. In spite of their submission to the contrary, the documents submitted by the Government indicate that the first applicant did inform the investigators that, in her opinion, her husband's killers were military servicemen (see paragraph 29 above). However, it appears that the investigators did not take any steps to check whether military servicemen were involved. The Government suggested that the persons responsible for Saidkhasan Dangayev's death could have been members of an illegal armed group that had also opened fire in the yards of two other representatives of local law-enforcement agencies in the evening of 23 October 2002. However, they failed to adduce any additional evidence relating to the investigation of those crimes or to explain what had been done in order to establish the identity of the perpetrators of those acts. The Government's conclusions thus seem speculative and do not contradict the applicants' allegation that a special operation was being carried out.

82. The Court observes that where the applicant makes out a prima facie case and the Court is prevented from reaching factual conclusions owing to a lack of documents it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

83. Taking into account the above elements, the Court is satisfied that the applicants have made out a prima facie case that Saidkhasan Dangayev was killed by State servicemen. The Government's statement that the

investigation did not find any evidence to support the involvement of military servicemen is insufficient to discharge the above-mentioned burden of proof. Drawing inferences from the Government's failure to submit the documents which were in their exclusive possession or to provide another plausible explanation for the events in question, the Court considers that Saidkhasan Dangayev was killed on 23 October 2002 by State servicemen.

84. The Court further notes that, regrettably, it has been unable to benefit from the results of the domestic investigation, owing to the Government's failure to disclose most of the documents in the file (see paragraph 64 above). Nevertheless, it is clear that the investigation has not been able to establish the identity of Saidkhasan Dangayev's killers.

85. Accordingly, the Court finds that the evidence available permits it to establish to the requisite standard of proof that Saidkhasan Dangayev was killed by State agents during an unacknowledged security operation.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

86. The applicants complained under Article 2 that their relative, Saidkhasan Gandaloyev, had been killed by State agents and that the domestic authorities had failed to carry out an effective investigation into the crime. They relied on Article 2 of the Convention, which provides:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. The parties' submissions

87. The applicants maintained that State agents had deprived Saidkhasan Gandaloyev of his life and that the Government had failed to submit any evidence to refute their allegations. They also argued that the criminal investigation had not met the requirements of effectiveness and adequacy required by the Court's case-law on Article 2. The prosecutor's office had failed to take a number of crucial investigative steps; the investigation had

been ongoing for several years; it had been suspended and reopened a number of times, but had failed to produce any tangible results; and, lastly the applicants had not been properly informed of the most important investigative measures.

88. The Government contended that the domestic investigation had obtained no evidence that any servicemen from the federal forces were involved in the killing of Saidkhasan Dangayev. They claimed that the investigation into his death had met the Convention requirements of effectiveness, as all the measure available under national law had been taken in an attempt to identify the perpetrators.

1. Admissibility

89. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Further, it has already found that the Government's objection concerning the alleged non-exhaustion of domestic remedies provided for by criminal law should be joined to the merits of the complaint (see paragraph 73 above). The complaint under Article 2 of the Convention must therefore be declared admissible.

2. Merits

(a) Alleged failure to protect the right to life

90. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivation of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324).

91. The Court has already found it established that the death of Saidkhasan Dangayev can be attributed to the State. In the absence of any justification put forward by the Government, the Court finds that there has been a violation of Article 2 in respect of Saidkhasan Dangayev.

(b) Alleged inadequacy of the investigation

92. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's

general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 86, *Reports of Judgments and Decisions* 1998-I). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim’s family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001, and *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

93. In the present case, an investigation was carried out into the murder of the applicants’ relative. The Court must assess whether that investigation met the requirements of Article 2 of the Convention.

94. The Court notes at the outset that most of the documents from the investigation file were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress provided by the Government.

95. The Court notes that the investigation into the killing of Saidkhasan Dangayev was instituted on 24 October 2002, that is to say, the day after his death. It also appears that within the following weeks the applicants and some of their neighbours were questioned, the crime scene was inspected, a perfunctory examination of the body was carried out and a ballistic report was ordered. The first applicant was granted victim status on 5 November 2002. However, it does not appear that any other steps were taken at that time to solve the crime. In particular, in spite of the first applicant’s complaints about the possible involvement of military servicemen in her husband’s death (see paragraph 29 above), the investigators neither questioned officers of the local military commander’s office and other law enforcement agencies about their involvement in the identity check and the raid on the houses in Pogranichnaya Street on the evening of 23 October 2002 nor identified witnesses who had seen the UAZ vehicle used by the killers. It also appears, that regardless of the instructions provided by the district prosecutor in his decision of 6 February 2004 (see paragraph 37 above), the investigators failed to take such basic investigative measures as obtaining the registration log of the car and armoured vehicles which passed

through the checkpoints along the Staropromyslovskiy main road during the night of 23 October 2002 and questioning the servicemen manning those checkpoints. It is obvious that if they were to produce any meaningful results these investigative measures should have been taken immediately after the crime was reported to the authorities, and as soon as the investigation commenced. Such delays, for which there has been no explanation in the instant case, not only demonstrate the authorities' failure to act of their own motion but also constitute a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

96. The Court also notes that even though the first applicant was granted victim status on 5 November 2002, she was only informed of the suspension and reopening of the proceedings, and not of any other significant developments. Accordingly, the investigators failed to ensure that the investigation and its results received the required level of public scrutiny. Nor did they safeguard the interests of the next-of-kin in the proceedings.

97. Finally, the Court notes that the investigation was suspended at least five times, that there were lengthy periods of inactivity and that on several occasions the supervising prosecutors pointed out the deficiencies in the proceedings and ordered measures to remedy them, but that their instructions were not complied with.

98. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the death of Saidkhasan Dangayev. This rendered recourse to the domestic remedies, whether civil or criminal, equally ineffective in the circumstances. The Court accordingly rejects the Government's preliminary objection in this respect and holds that there has been a violation of Article 2 under its procedural aspect.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicants further complained that as a result of the killing of their close relative they had endured mental suffering in breach of Article 3 of the Convention. They also complained under this head that Saidkhasan Dangayev had been beaten before being killed. Article 3 reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

100. The applicants repeated their submissions.

101. The Government disagreed with their allegations and argued that the investigation had not established that the applicants and Saidkhasan Dangayev had been subjected to inhuman or degrading treatment prohibited by Article 3 of the Convention.

B. The Court's assessment

(a) The complaint concerning the ill-treatment of Saidkhasan Dangayev

102. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161 *in fine*).

103. The Court observes that the documents before it indicate that Saidkhasan Dangayev sustained two gunshot wounds on 23 October 2002 which led to his death later that day. In addition, it does not appear that this complaint has been properly raised before the domestic authorities. The Court is therefore unable to establish, to the necessary standard of proof, that Saidkhasan Dangayev was ill-treated by Russian servicemen, and finds that this complaint has not been substantiated.

104. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) The complaint concerning the applicants' mental suffering

1. Admissibility

105. The Court notes that this part of the complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

106. The Court considers that in the present case no separate issues arise beyond those already examined under Articles 2 and 13 (see paragraphs 110-117 below).

107. In these circumstances, while the Court does not doubt that the death of the applicants' close relative caused the applicants profound suffering, it nevertheless finds no basis for finding a violation of Article 3 in

this context (see *Tangiyeva v. Russia*, no. 57935/00, §§ 104-105, 29 November 2007).

VI. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

108. The applicants alleged that they had had no access to a court as they were unable to bring a civil action for compensation for their relative's murder since the investigation had produced no results. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

109. The Court observes that the applicants submitted no evidence to prove their alleged intention to claim compensation through the domestic courts. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see *Musikhanova and Others v. Russia* (dec.), no. 27243/03, 10 July 2007).

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

110. The applicants complained that they had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

111. The applicants reiterated their complaint.

112. The Government contended that the applicants had had effective remedies at their disposal as required by Article 13 of the Convention and that the authorities had not prevented them from using them. The applicants had had an opportunity to challenge the acts or omissions of the investigating authorities in court and to bring civil claims for damages, but had failed to do so. In sum, the Government submitted that there had been no violation of Article 13.

B. The Court's assessment

1. Admissibility

113. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

114. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Ayдын v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva*, cited above, § 183).

115. In view of the Court's above findings with regard to Article 2, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

116. It follows that in circumstances where, as here, the criminal investigation into the murder of Saidkhasan Dangayev was ineffective and the effectiveness of any other remedy that may have existed, including civil remedies, was consequently undermined, the State has failed in its obligation under Article 13 of the Convention.

117. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

118. In their initial applications the applicants stated that they had been discriminated against on the grounds of their ethnic origin, contrary to the provisions of Article 14 of the Convention, which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

119. The Government disputed this allegation.

120. In their observations of 7 September 2007 the applicants stated that they no longer wished to pursue this complaint.

121. The Court, having regard to Article 37 of the Convention, notes that the applicants do not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). It finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaints by virtue of Article 37 § 1 of the Convention *in fine* (see, among other authorities, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unpublished; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96, 26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

122. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

124. The first applicant made a claim in respect of her husband Saidkhasan Dangayev’s loss of earnings. She claimed a total of 262,342.24 Russian roubles (RUR) under this head (7,491 euro (EUR)).

125. She claimed that Saidkhasan Dangayev had been employed as a senior bailiff on a monthly wage of RUR 3,988.14 (EUR 114). She provided

a certificate from the Ministry of Justice confirming the amount of his wages. She submitted that she was financially dependent on her husband and would have benefited from his financial support in the above amount of 262,342.24 RUR (EUR 7,491). Her calculations were based on the provisions of the Russian Civil Code and the actuarial tables for use in personal injury and fatal accident cases published by the United Kingdom Government Actuary's Department in 2004 ("Ogden tables").

126. The Government regarded these claims as based on suppositions and unfounded. In particular, they noted that the first applicant had never claimed compensation for the loss of the family breadwinner, although such a possibility was provided by domestic legislation.

127. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, where appropriate, entail compensation in respect of loss of earnings. Furthermore, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part". Having regard to its above conclusions, the Court finds that there is a direct causal link between the violation of Article 2 in respect of Saidkhasan Dangayev and the loss by the first applicant of the financial support which he could have provided. The Court further notes that the first applicant has submitted a certificate confirming the amount of her husband's earnings and that the Government have not disputed the method of calculation.

128. Having regard to the applicants' submissions, the Court awards EUR 7,491 to the first applicant in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

129. The first applicant claimed EUR 60,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her husband. The second applicant claimed EUR 10,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her brother.

130. The Government found the amounts claimed exaggerated.

131. The Court has found violations of the substantive and the procedural limbs of Article 2 and a violation of Article 13 of the Convention. The Court thus accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. Having regard to these considerations, the Court awards, on an equitable basis, EUR 30,000 to the first applicant and EUR 5,000 to the second applicant plus any tax that may be chargeable thereon.

C. Costs and expenses

132. The applicants were represented by the SRJI. They submitted an itemised schedule of costs and expenses that included research and interviews in Chechnya and Moscow, at a rate of EUR 50 per hour, and the drafting of legal documents submitted to the Court and the domestic authorities, at a rate of EUR 50 per hour for SRJI lawyers and EUR 150 per hour for SRJI senior staff and experts. The aggregate claim in respect of costs and expenses related to the applicants' legal representation amounted to EUR 7,811.

133. The Government disputed the amounts claimed and pointed out that the applicants were only entitled to reimbursement of costs and expenses that had actually been incurred and were reasonable. They also noted that two of the SRJI's lawyers who had signed the applicants' observations had not been named in the forms of authority.

134. The Court has to establish first whether the costs and expenses indicated by the applicants were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, cited above, § 220).

135. Having regard to the details of the contract, the Court is satisfied that these rates were reasonable and reflect the expenses actually incurred by the applicants' representatives. As to the Government's argument concerning the number of lawyers who signed the applicants' observations, it points out that the forms of authority were issued first and foremost in the name of the SRJI, not in that of its employees, and, accordingly, the NGO had a right to assign any of its lawyers to deal with the applicants' case. Therefore, the Court finds no ground for objection.

136. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that because of the application of Article 29 § 3 in the present case, the applicants' representatives submitted their observations on admissibility and merits in a single set of pleadings. It thus doubts that legal drafting was necessarily time-consuming to the extent claimed by the representatives. It also notes that the applicants' representatives have not submitted any documents in support of their claim for administrative costs.

137. Having regard to the details of the claims submitted by the applicants and ruling on an equitable basis, the Court awards the amount of EUR 5,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

D. Default interest

138. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicants' complaint under Article 14 of the Convention;
2. *Dismisses* the Government's objection as to the abuse of the right of petition;
3. *Decides* to join to the merits the Government's objection concerning the non-exhaustion of domestic remedies and rejects it;
4. *Declares* the complaints under Articles 2 and 13 of the Convention admissible and the remainder of the application inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention in respect of the death of Saidkhasan Dangayev;
6. *Holds* that there has been a violation of Article 2 of the Convention in respect of the failure to conduct an effective investigation into the circumstances of Saidkhasan Dangayev's death;
7. *Holds* that there has been a violation of Article 13 in conjunction with Article 2 of the Convention;
8. *Holds* (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 7,491 (seven thousand four hundred and ninety-one euros), plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the first applicant in respect of pecuniary damage;
 - (ii) EUR 30,000 (thirty thousand euros) plus any tax that may be chargeable, to be converted into Russian roubles at the rate

applicable at the date of settlement, to the first applicant in respect of non-pecuniary damage;

(iii) EUR 5,000 (five thousand euros) plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement, to the second applicant in respect of non-pecuniary damage;

(iv) EUR 4,150 (four thousand one hundred and fifty euros) in respect of the applicants' costs and expenses, plus any tax that may be chargeable to the applicants, to be paid into their representatives' bank account in the Netherlands.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President